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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.NO.1014/2005

CORAM : Hon'ble Shri S.R.Nayak, Chief Justice
& Hon'ble Shri Dilip Raosaheb Deshmukh, Judge

PETITIONER — Gore Lal, aged about 60 years S/o Late Shri Jairam, by occupation-Ex-Employee Fitter Grade-II, Electric Loco Shed, R/o 12 Kholi, Station-Para, Village-Kotmi-Sonar, P.O.-Kotmi-Sonar, Tahsil-Janjgir, District-Janjgir-Champa (C.G.)

VERSUS

RESPONDENTS

1. Union of India, Through, The Secretary, Ministry of Railway, DELHI (INDIA)
2. General Manager South East Central Railway, Bilaspur Division, Bilaspur (C.G.)
3. Senior Divisional Electrical Engineer, Electrical Loco Shed, SECR, Bhilai, District-Durg (C.G.)
4. Senior Section Engineer (M-1) Electrical Loco Shed, Marshalling Yard, SECR, Bhilai, District-Durg (C.G.)

Present: - Shri Ashok Swarnkar, learned counsel for the petitioner.
Shri Abhishek Sinha, learned Counsel for the respondents.

ORAL ORDER
(Passed on 23rd January, 2006)

The Following order of the Court was passed by S.R.NAYAK, C.J.

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1. The petitioner while serving as Gangman in the establishment of Railways, he was served with the Charge memo dated 26-05-1998 marked as Annexure R-1 alleging that the petitioner had been unauthorizedly absenting from duty with effect from 27-10-1997 and that conduct of the petitioner tantamounted to a serious misconduct in terms of the provisions of Rule-3(1)2(III) of Railways Conduct Rules, 1966 and calling upon the petitioner to submit his reply, if any. The petitioner submitted his reply to the Charge memo. The disciplinary authority not being satisfied with the reply of the petitioner, conducted departmental enquiry against the petitioner by appointing an enquiring authority. The enquiring authority having conducted the enquiry and appreciated the oral and documentary evidence came to the conclusion that the charge was proved. On return of the finding from the enquiring authority, the disciplinary authority issued a notice to the petitioner to have his say in the matter. The petitioner submitted his reply to the said notice. The disciplinary authority not being satisfied with the reply of the petitioner and having regard to the serious misconduct committed by the petitioner thought it appropriate to impose penalty of removal from service as a disciplinary measure. On 4-10-1999, the disciplinary authority passed the order removing the petitioner from service as a disciplinary measure.

2. The petitioner did not prefer any appeal to the Appellate Authority, which is provided under the Conduct & Appeal Rules. However, the petitioner instituted O.A.No.894/1993

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before the Central Administrative Tribunal, Jabalpur, Circuit Bench at Bilaspur (for short the "Tribunal") for a direction to the respondents to reinstate him into service as Fitter Grade-II and to pay the backwages with interest @ 18% per annum. The Original Application was opposed by the respondent by filing reply. The Tribunal having considered the facts and circumstances of the case, having heard the arguments of learned counsel for the parties and having perused the material documents filed in the case, did not find any merit in the Original Application and accordingly by its order dated 18-02-2005 dismissed the Original Application. Hence, this Writ Petition by the aggrieved delinquent employee.

3. We have heard learned counsel for the parties. It was contended by the learned counsel for the petitioner that though the disciplinary authority made the order on 04-10-1999 removing the petitioner from service as a disciplinary measure, that order was not communicated to the petitioner before 12-04-2004. On the said date, a copy of the said order was dispatched to the petitioner. It was also contended that the petitioner has had valid and justifiable reasons to absent himself from duties from 27-10-1997 and therefore, the extreme penalty of removal from service imposed upon the petitioner cannot be justified.

4. Learned counsel for the department, per contra, would support the impugned order as well as the impugned action taken by the department and would contend that the

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petitioner is guilty of grave misconduct and no leniency could be shown to such employee.

5. Having heard learned counsel for the parties, the point for our decision is whether any ground is made out on the basis of which we can step in under Article-226 of the Constitution of India and interfere with the disciplinary measure taken by the administration of Railways as affirmed by the Tribunal. It is needless to state that unauthorized absence is a serious misconduct. We are at loss to understand why the petitioner did not make application for grant of leave on time. Secondly, even assuming that the petitioner was suffering from jaundice, it was highly incredible for him to avail leave continuously for years. It is brought on record that the petitioner had been availing unauthorized leave habitually earlier also. If the petitioner absented from duties without authorization and permission w.e.f. 27-10-1997 for number of years, it could not be said that the penalty imposed by the disciplinary authority should shock the conscious of the Court so as to enable this Court to step in under Article-226 & 227 of the Constitution of India and apply Wednesbury rule of reasonableness. Looking from any angle, no case is made out calling for interference. The Writ Petition is devoid of merit and it is accordingly dismissed. There shall be no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Sd/-
Chief Justice

Tumane